

2008-2009-2010

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Superannuation Industry (Supervision)  
Amendment Bill 2010**

**No.     , 2010**

*(Treasury)*

**A Bill for an Act to amend the *Superannuation  
Industry (Supervision) Act 1993*, and for related  
purposes**



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1     **A Bill for an Act to amend the *Superannuation***  
2     ***Industry (Supervision) Act 1993, and for related***  
3     **purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Superannuation Industry*  
7                     *(Supervision) Amendment Act 2010*.

8     **2 Commencement**

9                     This Act commences on the day after this Act receives the Royal  
10                    Assent.

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**3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Limited recourse borrowing**  
2 **arrangements**  
3

4 *Superannuation Industry (Supervision) Act 1993*

5 **1 Subsection 10(1)**

6 Insert:

7 *acquirable asset* has the meaning given by section 67A.

8 **2 Subsection 10(1) (paragraph (a) of the definition of**  
9 ***excluded instalment trust*)**

10 Omit “(within the meaning of subsection 66(5))”.

11 **3 Subsection 10(1)**

12 Insert:

13 *instalment receipt* means an investment under which:

- 14 (a) a listed security is held in a trust until the purchase price of  
15 the security is fully paid; and  
16 (b) the security, and property derived from the security, is the  
17 only trust property.

18 **4 Subsection 10(1)**

19 Insert:

20 *listed security* has the meaning given by subsection 66(5).

21 **5 Subsection 67(1)**

22 After “this section”, insert “and section 67A”.

23 **6 At the end of subsection 67(1)**

24 Add:

25 Note: Section 67A contains an exception for certain limited recourse  
26 borrowing arrangements.

27 **7 Subsection 67(4A)**

28 Repeal the subsection.

1 **8 After section 67**

2 Insert:

3 **67A Limited recourse borrowing arrangements**

4 *Exception*

5 (1) Subsection 67(1) does not prohibit a trustee of a regulated  
6 superannuation fund (the *RSF trustee*) from borrowing money, or  
7 maintaining a borrowing of money, under an arrangement under  
8 which:

- 9 (a) the money is or has been applied for the acquisition of a  
10 single acquirable asset, including:  
11 (i) expenses incurred in connection with the borrowing or  
12 acquisition, or in maintaining or repairing the acquirable  
13 asset (but not expenses incurred in improving the  
14 acquirable asset); and

15 Example: Conveyancing fees, stamp duty, brokerage or loan establishment  
16 costs.

- 17 (ii) money applied to refinance a borrowing (including any  
18 accrued interest on a borrowing) to which this  
19 subsection applied (including because of section 67B) in  
20 relation to the single acquirable asset (and no other  
21 acquirable asset); and

22 (b) the acquirable asset is held on trust so that the RSF trustee  
23 acquires a beneficial interest in the acquirable asset; and

24 (c) the RSF trustee has a right to acquire legal ownership of the  
25 acquirable asset by making one or more payments after  
26 acquiring the beneficial interest; and

27 (d) the rights of the lender or any other person against the RSF  
28 trustee for, in connection with, or as a result of, (whether  
29 directly or indirectly) default on:

- 30 (i) the borrowing; or  
31 (ii) the sum of the borrowing and charges related to the  
32 borrowing;

33 are limited to rights relating to the acquirable asset; and

34 Example: Any right of a person to be indemnified by the RSF trustee  
35 because of a personal guarantee given by that person in favour of  
36 the lender is limited to rights relating to the acquirable asset.



- 1 (e) if, under the arrangement, the RSF trustee has a right relating  
2 to the acquirable asset (other than a right described in  
3 paragraph (c))—the rights of the lender or any other person  
4 against the RSF trustee for, in connection with, or as a result  
5 of, (whether directly or indirectly) the RSF trustee’s exercise  
6 of the RSF trustee’s right are limited to rights relating to the  
7 acquirable asset; and  
8 (f) the acquirable asset is not subject to any charge (including a  
9 mortgage, lien or other encumbrance) except as provided for  
10 in paragraph (d) or (e).

11 *Meaning of acquirable asset*

- 12 (2) An asset is an *acquirable asset* if:  
13 (a) the asset is not money (whether Australian currency or  
14 currency of another country); and  
15 (b) neither this Act nor any other law prohibits the RSF trustee  
16 from acquiring the asset.
- 17 (3) This section and section 67B apply to a collection of assets in the  
18 same way as they apply to a single asset, if:  
19 (a) the assets in the collection have the same market value as  
20 each other; and  
21 (b) the assets in the collection are identical to each other.  
22 Example: A collection of shares of the same class in a single company.
- 23 (4) For the purposes of this section and section 67B, the regulations  
24 may provide that, in prescribed circumstances, an acquirable asset  
25 ceases to be that particular acquirable asset.

26 *RSF trustee*

- 27 (5) Paragraphs (1)(d) and (e) do not apply to a right of:  
28 (a) a member of the regulated superannuation fund; or  
29 (b) another trustee of the regulated superannuation fund;  
30 to damages against the RSF trustee for a breach by the RSF trustee  
31 of any of the RSF trustee’s duties as trustee.
- 32 (6) A reference in paragraph (1)(d) or (e) (but not in subsection (5)) to  
33 a right of any person against the RSF trustee includes a reference to  
34 a right of a person who is the RSF trustee, if the person holds the  
35 right in another capacity.

1 **67B Limited recourse borrowing arrangements—replacement assets**

2 (1) Subsection (2) applies to:

3 (a) a reference in paragraph 67A(1)(b), (c), (d), (e) or (f) to an  
4 acquirable asset (the *original asset*); or

5 (b) a reference in subsection 71(8) to an acquirable asset (the  
6 *original asset*) mentioned in paragraph 67A(1)(b);

7 (including a reference resulting from a previous application of  
8 subsection (2) of this section).

9 (2) Treat the reference as being a reference to another single  
10 acquirable asset (the *replacement asset*) if:

11 (a) the replacement asset replaces the original asset; and

12 (b) subsection (3), (4), (5), (6), (7) or (8) applies.

13 (3) This subsection applies if:

14 (a) the original asset consists of:

15 (i) a share in a company, or a collection of shares in a  
16 company; or

17 (ii) a unit in a unit trust, or a collection of units in a unit  
18 trust; and

19 (b) the replacement asset consists of:

20 (i) a share in that company, or a collection of shares in that  
21 company; or

22 (ii) a unit in that unit trust, or a collection of units in that  
23 unit trust; and

24 (c) at the time the replacement occurs, the original asset and the  
25 replacement asset have the same market value.

26 (4) This subsection applies if:

27 (a) the original asset consists of an instalment receipt that  
28 confers a beneficial interest in:

29 (i) a share in a company; or

30 (ii) a collection of shares in a company; and

31 (b) the replacement asset consists of that share or collection.

32 (5) This subsection applies if:

33 (a) the original asset consists of:

34 (i) a share in a company, or a collection of shares in a  
35 company; or

- 1 (ii) a unit in a unit trust, or a collection of units in a unit  
2 trust; and
- 3 (b) the replacement asset consists of:
- 4 (i) a share in another company, or a collection of shares in  
5 another company; or
- 6 (ii) a unit in another unit trust, or a collection of units in  
7 another unit trust; and
- 8 (c) the replacement occurs as a result of a takeover, merger,  
9 demerger or restructure of the company or unit trust  
10 mentioned in paragraph (a).
- 11 (6) This subsection applies if:
- 12 (a) the original asset consists of a share in a company, or a  
13 collection of shares in a company; and
- 14 (b) the replacement asset consists of a stapled security, or a  
15 collection of stapled securities; and
- 16 (c) each of those stapled securities consists of a single share, or a  
17 single collection of shares of the same class, stapled together  
18 with a single unit, or a single collection of units of the same  
19 class, in a unit trust; and
- 20 (d) the replacement occurs under a scheme of arrangement of the  
21 company.
- 22 (7) This subsection applies if:
- 23 (a) the original asset consists of a unit in a unit trust, or a  
24 collection of units in a unit trust; and
- 25 (b) the replacement asset consists of a unit in that unit trust, or a  
26 collection of units in that unit trust; and
- 27 (c) the replacement occurs as a result of an exercise of a  
28 discretion granted under the trust deed of that unit trust to the  
29 trustee of that unit trust.
- 30 (8) This subsection applies in the circumstances (if any) prescribed by  
31 the regulations for the purposes of this subsection.

32 **9 Paragraph 71(1)(g)**

33 Omit “(within the meaning of subsection 66(5))”.

34 **10 Paragraph 71(8)(b)**

35 Omit “paragraph 67(4A)(b)”, substitute “paragraph 67A(1)(b)”.

1 **11 Paragraph 71(8)(b)**

2 Omit “subsection 67(4A)”, substitute “subsection 67A(1)”.

3 **12 Paragraph 71(8)(c)**

4 Omit “original asset or replacement described in that subsection”,  
5 substitute “acquirable asset mentioned in that paragraph”.

6 **13 Subsection 71(8)**

7 Omit “if the original asset or replacement described in subsection  
8 67(4A)”, substitute “if the acquirable asset mentioned in that  
9 paragraph”.

10 **14 Application provision**

11 The amendments made by this Schedule apply to an arrangement  
12 entered into on or after the commencement of this item (including an  
13 arrangement that is a refinancing of a borrowing of money under an  
14 arrangement entered into before, on or after that commencement).